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ABSTRACT

A study examined the legal treatment of the press in constitutions or other basic legal institutional documents from around the world. Sixty-three constitutions or basic documents from the Western World, the Communist Bloc, the Middle East, Africa, Southeast Asia, and Latin America were analyzed. Analysis revealed that most constitutions open with a freedom-guaranteeing clause and proceed (with great diversity in length, language, and priorities) to define the exceptions to that freedom. Findings suggest that it is not the length or the eloquence of the provision but the spirit behind its enforcement that measures a nation's dedication to the human right of freedom of expression. (Thirteen endnotes are attached.) (Author/RS)

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ABSTRACT

Constitutional Provisions on the Press: A World View

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In the age of "glasnost" and the "new world information order" debate, not much is known of the legal treatment of the press in other parts of the world. This study analyzed 63 constitutions or basic documents in an effort to evaluate how these national documents referred to the press.

Some constitutional provisions are very laconic and others very lengthy. Some, including those from the Eastern bloc, are very "liberal" in their language and others very restrictive. Apparently it is not the length or the eloquence of the provision but the spirit behind its enforcement that measures a nation's dedication to the human right to freedom of expression.

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ABSTRACT

Constitutional Press Provisions on the Press:
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In the age of "glasnost" and the "new world information order" debate, not much is known of the legal treatment of the press in other parts of the world. This study analyzed 63 constitutions or basic documents in an effort to evaluate how these national documents referred to the press.

The analysis was divided into three major groups: the constitutions of the Western World, those from the Communist Bloc and those from the developing countries, subdivided into constitutions from the Middle East, Africa, Southeast Asia and Latin America.

The analysis showed most constitutions open with a freedom-guaranteeing clause and proceed (with a great diversity in length, language and priorities) to define the exceptions to that freedom.

Some constitutional provisions are very laconic and others very lengthy. Some, including those from the Eastern bloc, are very "liberal" and "democratic" in their language but others are very restrictive. Apparently it is not the length or the eloquence of the provision but the spirit behind its enforcement that measures a nation's dedication to the human right to freedom of expression.

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I. Introduction

In the era of "glasnost" and the "new world information order" debate, much international attention has focused on the general notion of press freedom, if only to gauge how well it might fare within the philosophical frameworks of these concepts and the movements they represent. One key aspect of these frameworks, of course, is the amount of freedom the press would enjoy--in other words, the legal "protection" it might have from the states in the exercise of its function.

Unfortunately, neither the international professional journalism community that normally spearheads national and international press "protection" efforts, nor the academic community, nor any international organization has an extensive, globally focused, up-to-date centralized depository of information about laws affecting press freedom around the world.

Few books on international mass media address the issue with any consequence; Kurian's the World Press Encyclopedia[1] and Merrill's Global Journalism[2] are exceptions. Books about regional and/or national press systems often offer significant contributions to the prevailing legal picture concerning the press. Some of the better books in the English language are Hachten's Muffled Drums,[3] about the press of Africa; Picard's

The Ravens of Odin,[4] about the press of the Scandinavian countries; Sawer's A Guide to Australian Law for Journalists, Authors, Printers and Publishers;[5] Gobel's Press Laws,[6] about the situation in West Germany; McNae's Essential Law for Journalists,[7] about the situation in Great Britain; Finnish Press Laws;[8] Burrow's News Media Law in New Zealand[9] and Constitutional Documents of Sweden[10].

Some of the more notable books of the specialized "world press law" genre are Terrou and Solal's Legislation for the Press, Film and Radio,[11] Nimmo and Mansfield's Government and the News Media: Comparative Dimensions[12] and Lahav's Press Law in Modern Democracies.[13]

This study will address one aspect of the larger question of press laws around the world by focusing on how the central legal institutional document of a foreign country, the "basic law", constitution or citizen rights/liberties document treats its press system.

In order to obtain these documents, the author sent letters to the press or cultural attaches of 108 foreign embassies in Washington, D.C., and, if ncessary at their recommendation, to

the home ministries of justice, press organizations and university mass communication, journalism or law schools. Sixty three usable responses were received. The constitutional provisions in the next section reflect the results of this survey. They will be presented in three different segments: the constitutional press provisions of the Western World, those of the Eastern Bloc countries and those of the Developing World, subdivided into constitutions of the Middle Eastern, African, S.E. Asian and Latin American nations.

The vast majority of the documents received had been translated into English but a few were translated by professional interpreters employed by the author.

II. The Survey Results

A. The Western World

European constitutions traditionally seem to be on the forefront of guaranteeing freedom of the press either in direct terms, specifically referring to the press or mass communication media, or guaranteeing freedom of expression or communication of one's ideas.

Furthermore, some constitutions guarantee press freedom without

qualifications. This category includes the laconic Swiss constitution (Article 55), which says, "The freedom of the press is guaranteed;" the Swedish constitution (Chapter 2, Article 1), which says, "Every citizen shall in relation to the community be guaranteed the freedom of expression and the freedom of the press;" the Dutch constitution (Section 7), which says, "No person shall require previous permission to publish thoughts or feelings by means of the printing press" and the Belgian constitution, which says (Article 18), "The press is free; no form of censorship may ever be instituted; no cautionary deposit may be demanded from writers, publishers or printers."

Constitutions of the same powerful simplicity are also found outside Europe. The Japanese constitution, for example, says (Article 21), "Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed." Along the same lines the South Korean constitution says (Article 20), "All citizens shall enjoy freedom of speech and the press and freedom of assembly and association".

Another type of constitution introduces some qualifications to the press freedoms it provides. Included in this "category" would be the constitution of Finland, which says (Capter II,

Article 10), "Finnish citizens shall enjoy freedom of speech and the right to print and publish written and pictorial representations without interference....The rules concerning the exercise of these rights shall be prescribed by law;" that of Austria (Article 13), which says that "every person has the right to free expression of opinion in speech, writing, print or the visual media within the limits of legal regulations" and that of Denmark, which says (Article 77), "Any person shall be at liberty to publish his ideas in print, in writing and in speech, subject to his being held responsible in a court of law. Censorship and other preventive measures shall never be introduced."

Other Western constitutions introduce even more "qualifiers" to the freedom they provide to the press. The constitution of West Germany, for example, says (Basic Rights, Article 5), "Everyone shall have the right freely to express and disseminate his opinion by speech, writing and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting...are guaranteed. There shall be no censorship." But Section 2 of the same article says that "these rights are limited by the provisions of the general laws, the provisions of law for the protection of youth and by the right

to inviolability of personal honor." The French Bill of Rights (Article 11) says, "Free communication of thought and opinion is one of the most valuable rights of man; thus, every citizen may speak, write and print his views freely, provided only that he accepts the bounds of this freedom established by law." The constitution of Luxemburg (Article 24) guarantees "freedom of speech in all matters and freedom of the press" but "subject to the repression of offenses committed in the exercise of these freedoms."

In the same vein is the Portuguese constitution which in Article 38 says that "freedom of the press shall be safeguarded." Furthermore, Article 37 says that "everyone shall have the right to express and make known his thoughts freely by words, images or other means." But, the same article concludes, "offenses committed in the exercise of these rights shall be punishable under ordinary law...."

Another group of Western constitutions is more specific about the kinds of offenses that are not permitted by the press freedom clauses. The Norwegian consitution in Article 100 says, "There shall be liberty of the press. No person must be punished for any writing, whatever its contents may be...unless he

wilfully and manifestly has either himself shown or incited others to disobedience of the laws, contempt of religion or morality or the constitutional powers or resistance to their orders, or has advanced false and defamatory accusations against any other person." The Irish Fundamental Rights Law (Article 40) guarantees "the right of the citizens to express freely their convictions and opinions" but only "subject to public order and morality." "The publication or utterance," the article says, "of blasphemous, seditious, or indecent matter is an offense which shall be punishable in accordance with law."

The constitution of Malta, although it does not mention the "press" specifically, does guarantee "freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference..." but those freedoms are limited "in the interests of defense, public safety, public order, public morality or decency or public health" or "for the purpose of protecting the reputations, rights and freedoms of other persons...."

In Spain, Article 20 of the constitution "recognizes" and "protects" the right to "freely express and disseminate thoughts, ideas and opinions by word, in writing or any other

means of divulgation..." and "the right to freely communicate or receive truthful information...." However, "These freedoms are limited by respect for the rights recognized in this Title, by the precepts of the laws implementing it, and especially by the right to honour, to privacy, to personal reputation and to the protection of youth and childhood."

The Greek constitution (Article 14) guarantees both freedom of expression and freedom of the press. These freedoms can legally be curtailed in the following circumstances: in "offenses against the Christian or any other known religion;" in "insult against the person of the President of the Republic;" if a publication discloses national defense information; and in case of "an obscene article obviously offensive to public decency...."

The Cypriot constitution (Article 19) recognizes many of the freedoms but "subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the

disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary."

Finally, similar language can be found in Israel's Basic Law (Article 11) which guarantees the right of free expression and idea dissemination with the provision that limits would be set to "ensure the existence of a democratic rule, to safeguard the defense of the State and the public peace, to safeguard moral values or to prevent desecration of religion, to safeguard the rights of others or to guarantee proper legal proceedings."

B. The Communist Bloc

The three main characteristics of the constitutions of the Communist nations are: 1. The opening language of the press freedom guarantee is very "Western" in appearance; 2. the beneficiaries of this and related freedoms are the "working people" and 3. the state is to provide the people with all the tools necessary to succesfully be involved in the activities to which these provisions refer.

Article 50 of the Soviet constitution, for example, says: "In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the

USSR are guaranteed freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations. Exercise of these political freedoms is ensured by putting public buldings, streets and squares at the disposal of the working people and their organisations, by broad dissemination of information, and by the opportunity to use the press, television, and radio."

The Polish constitution (Article 83) guarantees exactly the same freedoms and puts at the disposal of the working people "printing shops, stocks of paper, public buildings and halls, means of communication, the radio and other indispensable material means" in order to "give effect to this freedom."

"Freedom of speech and of the press, consistent with the interests of the working people" is what the Czechoslovakian constitution (Article 28) guarantees and sees that freedom as enabling "citizens to further the development of their personalities and their creative efforts and to take an active part in the administration of the State and in the economic and cultural development of the country." The Albanian constitution guarantees the same freedoms and simply promises that the state "creates the conditions for them and makes available the

necessary material means."

Although basically the same, some cultural differences appear in the wording of the constitution of the People's Republic of China, which says (Article 45) that "citizens enjoy freedom of speech, correspondence, the press, assembly, association, procession, demonstration and the freedom to strike, and have the right to speak out freely, air their views fully, hold great debates and write big-character posters."

The Romanian constitution offers a slight deviation to the language encountered thus far because, although it promises the same freedoms as all the other Communist constitutions (Article 28), it sets some limits. "The freedom of speech, of the Press, assembly, meeting and demonstration," Article 29 says, "may not be used for purposes hostile to the Socialist system and to the interests of the working people."

C. The Developing World

1. The Extended Middle East Region

Great similarities exist among the constitutions of the countries in this part of the world. The constitution of Kuwait, for example, says (Article 37) that "freedom of the press,

printing and publishing shall be guaranteed in accordance with the conditions and manner specified by law." The constitution of Qatar (Article 13) uses almost identical language and the consitution of the United Arab Emirates (Article 30) simply incorporates "freedom of opinion and expressing it verbally, in writing or by other means of expression" in its guarantees "within the limits of the law." The same sentiment dominates the Yemen constitution (Article 25) except that its protection extends to the expression of "views by word of mouth or in writing or by taking photographs."

The Egyptian constitution in Article 47 guarantees freedom of opinion and its expression "verbally, or in writing or by photography or by other means within the limits of the law." Freedom of the press and other mass media is specifically guaranteed in Article 48, which also forbids censorship, suspension, warning or closing except in state emergencies and "in matters related to public safety or purposes of national security in accordance with the law." The same spirit prevails in the constitution of Jordan (Chapter II, Article 15) which has exactly the same exceptions.

One of the world's lengthiest and most detailed on

press-specific provisions is the constitution of Turkey. Article 20 guarantees freedom of opinion and its expression "singly, collectively, through word of mouth, in writing, through pictures or through other media." Article 22 says, "The press is free and shall not be censored," and it describes under what circumstances that freedom may be restricted: "The integrity of the State with its territory and people, public order, national security and the secrecy demanded by national security or public morality; to prevent attacks on the dignity, honour and rights of individuals; to preclude instigations to commit crimes; or to assure proper implementation of judicial functions." The rest of the article describes the procedure of the law enforcement. Articles 23-27 deal with the unlicensed right to publish, the protection of printing equipment, the right of individuals and political parties "to make use of communications media other than the press," and the right of reply.

2. Africa

One of the area's simplest constitutions is that of Morocco, which in Article 9 guarantees its citizens "freedom of opinion, expression and meeting" with the privision that "no restrictions shall be imposed on such freedoms other than by law." The

constitution of Ghana has a three-article reference to the press ("The Press Commission" chapter), the last of which (Article 195) states that "Parliament shall have no power to enact an Act requiring or authorizing any authority to require a person to obtain or maintain a license of any kind for the establishment or operation of a newspaper, publication or institution of the press or other media for mass communication or information."

The Nigerian constitution (Article 25) guarantees "freedom of expression, including freedom to hold opinions and to receive and impart ideas or information without interference." The second section of the article outlines the limits that may be imposed on this freedom by laws which are "reasonably justifiable in a democratic society." These are laws in the interest of national defense, public safety, public order, public morality, public health, the honor of persons, confidential information, the independence of the court system or "the regulating of telephony, wireless broadcasting, television or the exhibition of cinematograph films." The Constitutions of Kenya (Article 79), Gambia (Article 22) and Botswana (Article 12) offer very much the same freedoms and restrictions except for their opening language. The Botswana provision says "Except with his own consent, no person shall be

hindered in the enjoyment of his freedom of expression..." (Botswanan provision).

Finally, in wording reminiscent of the Soviet prototype, the constitution of Benin (Article 134) says that its citizens "enjoy the freedom of speech, of the press, of correspondence, of assembly of association and of expression. The state assumes the material conditions necessary to enjoy these rights."

3. The Extended Southeast Asia Region

The constitution of the Philippines contains (Article III, Section 4) language clearly reminiscent of the American First Amendment: "No law shall be passed abridging the freedom of speech, or of expression or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."

A little more descriptive of limitations is the Thai constitution (Section 34) which says that "Every person shall enjoy the liberty of speech, writing, printing and publication." Restrictions shall not be imposed "except by virtue of law specifically enacted for the purposes of maintaining the security of the State or safeguarding the liberties, dignity or

reputation of other persons or maintaining public order or good morals or preventing deterioration of the mind or health of the public."

Three constitutions that are virtually identical in their provisions for the press or free expression are those of India (Article 19), Singapore (Article 14) and Malaysia (Article 10) all of which guarantee "freedom of speech and of expression to all citizens," but which also contain the generally found exceptions with the addition of allowing restrictions necessary "in the interest of ...friendly relations with other countries" (the Malaysian provision).

Finally in this region, the provision that really departs from those of the neighboring nations is found in the consitution of Pakistan. "Every citizen shall have the right to freedom of speech and expression and there shall be freedom of the press," Article 19 says, "subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offense."

4. Latin America

A wealth of language differences is one of the main characteristics of the press provisions found in the constitutions in this part of the world. One of the simplest is Argentina's, which in Article 14 guarantees the "right to publicize ideas by the press without censorship" and the citizen's "right to be informed." Article 32 says "the Federal Congress shall not dictate laws which restrict freedom of the press."

The constitutions of Venezuela (Article 66) and Costa Rica (Article 29) also simply guarantee freedom of expression without censorship but do mention that abuses will be handled according to the law.

A more complex constitution is Ecuador's, which guarantees (Article 141, Section 10) "freedom of opinion, whatever may be the means to express and communicate it." There are restrictions, however, in matters of "insults, calumny and all immoral expressions." An intriguing provision in the same section says that "the law shall regulate the practice of journalism, taking into account that the primary object of

journalism is the defense of the national interests and that it constitutes a social service entitled the respect and support of the State. It shall also establish the means to make effective the liabilities that the journalists incur." Those working in the journalism-related professions can be prosecuted "for crimes of the press" if their "guilt is legally proven."

The constitution of the Dominican Republic (Title II, Article 6) provides the usual freedom of expression guarantees and exclusions but adds that "all subversive propaganda is prohibited...but this shall not limit the right of analysis or criticism of legal principles." Another unusual provision appears in Article 10, which states that the news media should have access to all public and private news sources "provided they do not go against public order or jeopardize national security."

Article 141 of the constitution of Brazil guarantees freedom of thought and expression except for "shows and public spectacles." Although licensing is forbidden, "Propaganda 1. of war, 2. of violent methods to overthrow public order and 3. of prejudice of race or class, shall not be tolerated." Similar exceptions to free expression are guaranteed by the constitution of Suriname

(General Decree A, No. 59).

The nations of the Caribbean Commonwealth have the the same press provisions in their constitutions. Unless it is with his own consent, they say, "no person shall be hindered in the enjoyment of his freedom of expression..." including freedom to express and receive ideas. The general exceptions on grounds of national defense, morality, public order, etc., are mentioned.

Article 6 of the Mexican constitution guarantees freedom of expression except for attacks on morals and incitement to crime. Article 7 outlaws censorship and outlines the areas where legal limitations are permissible.

Finally, the Nicaraguan constitution (Article 20) refers to freedom of information as "one of the fundamental principles of authentic democracy" which therefore "cannot be subjugated, directly or indirectly, to the economic power of any group." Article 21 provides the right of free expression, the right to freely "seek, receive and distribute information and ideas" in any form. The article concludes by reminding citizens that these rights come with "duties and responsibilities and, consequently, may be subject to certain necessary formalities, conditions and

restrictions specified by law."

III. Discussion

The constitutions reviewed in this study represent a microcosmic sample of the value different cultures and ideologies around the world attach to their press systems.

From those constitutions that mention the mass media specifically to those that refer to them through the expression or communication models, it is evident that the concept of a press, especially a free press, is a desirable goal for most nations.

Achieving that goal, however, is obviously an extremely complicated legal matter. In some cases, the simple, parsimonious constitutional provisions addressed very eloquently the needs of their nations. In others, the authors of the constitutions had to generally refer to the limitations that could be found in other pieces of legislation, while some constitutions mentioned in detail the offenses that the laws would not tolerate.

Most of these offenses were similar--national security matters, obscenity, public order or health, personal honor or reputation, etc. Interesting additions were the prohibitions against offending religious beliefs, certain heads of state and the relationship with other nations.

One key commonality in the constitutions that mentioned the broadcast media is that they outlaw their private ownership. It was also evident that both the electronic and the celluloid media were specifically excluded from the freedoms guaranteed to the printed press.

Finally, in spite of its paternalistic attitude, the democratic language of the Communist constitutions was unexpected. Perhaps this shows that it is neither the length of the law nor its liberal language but the spirit behind its enforcement that measures a nation's respect for the human right to free communication.

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